

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 15 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0336-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ANTHONY TERRELL THOMPSON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20043616

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Anthony Terrell Thompson

Florence
In Propria Persona

HOWARD, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Anthony Thompson was convicted in 2006 of one count of sexual conduct with a minor under the age of fifteen, a class two felony and a dangerous crime against children. The trial court sentenced him to an

enhanced, presumptive, twenty-year prison term. In 2007, we denied relief on Thompson's petition for review of the court's denial of his first petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., in which he challenged his guilty plea and asserted trial counsel had been ineffective. *State v. Thompson*, No. 2 CA-CR 2007-0106-PR (memorandum decision filed Aug. 31, 2007). In 2009, we denied relief on Thompson's petition for review of the court's dismissal of his second petition for post-conviction relief, in which he asserted the court improperly had "engage[d] in plea negotiations" with him and had misled him regarding the length of his sentence. *State v. Thompson*, No. 2 CA-CR 2009-0136-PR, ¶ 4 (memorandum decision filed Aug. 31, 2009). Thompson subsequently filed his third petition for post-conviction relief, once again raising claims of ineffective assistance of trial counsel. This petition for review follows the court's summary dismissal of Thompson's most recent petition and his motion for rehearing/reconsideration. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 On review, Thompson argues the trial court abused its discretion by denying relief on his claims of ineffective assistance of counsel, which the court found precluded, and by denying his motion for rehearing/reconsideration, which the court found untimely and, in any event, without merit. *See* Ariz. R. Crim. P. 32.2(a), 32.9(a). Based on the record before us, we cannot say the court abused its discretion in ruling as it did. The court denied relief in two thorough minute entry orders that clearly identified Thompson's arguments and correctly ruled on them in a manner that will allow any

future court to understand its resolution. We therefore approve and adopt the court's rulings and see no need to reiterate them here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 Thompson also argues that, at the very least, he was entitled to an evidentiary hearing. A defendant is entitled to a hearing only if he raises a colorable claim for relief, which is one that, if taken as true, likely would have changed the outcome of the case. *State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990). Based on the trial court's proper determination that Thompson's claim was precluded and, in any event, did not present a colorable claim for relief, the court correctly dismissed his petition without conducting an evidentiary hearing. In addition, Thompson asks us to consider claims he raised for the first time in his petition for review and in his "Unsworn Declaration and Case Summary," a document he apparently signed on October 20, 2010 but never filed in the trial court. It appears Thompson is raising, for the first time on review, claims of ineffective assistance of Rule 32 counsel, and is asking us to consider additional claims raised in a pleading he appears to have executed well after the trial court ruled in August and September 2010. Because these claims were not raised properly in the trial court, we decline to consider them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review any issue on which trial court had not first had opportunity to rule); *see also* Ariz. R. Crim. P. 32.9(c) (aggrieved party may petition appellate court "for review of the actions of the trial court").

¶4 Because the trial court did not abuse its discretion, we grant the petition for review but deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge